United Brotherhood of Carpenters and Joiners of America, Local Union No. 943, AFL–CIO (Oklahoma Fixture Co.) *and* Jack Bodenstein. Case 17–CB–4486

January 10, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On July 29, 1994, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief to the exceptions of the Respondent.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the judge's recommended Order as modified and set forth in full below.[1]

The judge found that the Respondent violated Section 8(b)(1)(A) of the Act by failing to satisfy its obligations under *Communications Workers v. Beck*, 487 U.S. 735 (1988). We agree with the judge in light of our decision in *California Saw & Knife Works*, 320 NLRB 224 (1995).

In *Communications Workers v. Beck*, the Supreme Court held that the National Labor Relations Act does not permit a collective-bargaining representative, over the objection of dues paying nonmember employees, to expend funds collected from them under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment.[2] In *California Saw & Knife Works*, the Board held that if a nonmember employee chooses to file a *Beck* objection, the employee must be apprised by the union of the following information: the percentage of the reduction in fees for objecting nonmembers, the basis for the union's calculation, and the right to challenge these figures.[3] The purpose for providing objectors with this information is to allow an employee to decide whether there is any reason to mount a challenge to the union's dues reduction calculations.[4] Also in *California Saw & Knife*, the Board examined the respondent unions' procedures for processing *Beck* objections to payment of full dues and challenges to charging particular expenses to the representational portions of dues. It made it clear that when a union seeks to require an objecting employee to pay dues under a union-security clause, reasonable procedures must be available for filing challenges to the amounts charged. Any procedures not shown to be arbitrary, discriminatory, or in bad faith will satisfy the union's obligations under *Beck* as embodied in Section 8(b)(1)(A) of the Act.

On July 6, 1993, Charging Party Bodenstein filed a *Beck* objection with the Respondent. The record establishes that, on receiving the *Beck* objection, the Respondent failed to provide the Charging Party with information concerning the percentage of the reduction in fees for objecting nonmembers, the basis for the Union's calculation, and the right to challenge these figures. The Respondent accordingly violated Section 8(b)(1)(A) of the Act by failing to provide the Charging Party with information to allow him to decide whether to mount a challenge to the Union's dues reduction calculations, as we have required in *California Saw & Knife Works*.

The Respondent contends that it offered the Charging Party a reasonable accommodation by informing him that he could pay the equivalent of full dues to a mutually agreed-upon charity. The Respondent argues that the Charging Party was the only individual it represented who filed a *Beck* objection, and that by offering him this option it avoided the cost of compiling *Beck*-related financial information, a cost which would have been prohibitive and deleterious to its representation of the entire bargaining unit. The Respondent contends that it was not violating the Charging Party's rights under *Beck* by offering him this option, because it was not thereby expending any objectors' fees itself for nonrepresentational purposes.

In *Laborers Local 265 (Fred A. Nemann Co.)*, 322 NLRB No. 47 (Sept. 30, 1996), we held that a union did not breach its duty of fair representation by failing to provide a *Beck* objector with *Beck*-related financial information, where the union expressly waived the objector's obligations under the union-security clause and informed the objector that she would not be required to pay any dues or fees. In this case, however, the Respondent has not waived the objector's obligations to pay any amounts under the union-security clause; rather, it is still requiring him to pay the equivalent of full dues and fees. In these circumstances, the Union is required to inform the objector, inter alia, of the percentage of dues and fees spent for representational purposes. Even if the Union claims that the figure is 100 percent, the employees are entitled to information to enable them to decide whether to challenge that figure. Accordingly, unlike the situation in *Fred A. Nemann*, the Respondent is not relieved of its obligation to provide the Charging Party and other objectors with *Beck*-related financial information.

[1] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[2] 487 U.S. at 752–754.

[3] *California Saw & Knife Works*, supra at 233.

[4] Id. at 240.

In addition to alleging that the Respondent failed to give *Beck*-related financial information to Charging Party Bodenstein, the complaint alleges that the Respondent unlawfully failed "to establish a procedure whereby dues-paying nonmember employees employed in the unit" could file *Beck* objections to payment of dues for nonrepresentational purposes. We find that allegation sustained on the basis of the evidence, discussed above, showing that the Union's only response to the Charging Party's *Beck* objection was to tell him that he could pay the equivalent of full dues to a mutually agreed-upon charity. As explained in *Fred Nemann*, if a union waives the obligation of a dues objector to pay dues under a union-security clause, it will be relieved of the necessity to make procedures available to the objector to obtain information and file challenges in order to pay less than the full amount of dues. The Respondent's use of a charitable alternative, on the other hand, cannot serve to foreclose such requirements. We accordingly find that the Respondent violated Section 8(b)(1)(A) of the Act by failing to make available to the Charging Party objector a procedure, consistent with the duty of fair representation, for challenging the amounts charged, absent waiver of the Charging Party's union-security obligations.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, United Brotherhood of Carpenters and Joiners of America, Local Union No. 943, AFL–CIO, Tulsa, Oklahoma, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to provide employees who have filed a *Beck* objection with information to allow the objecting employees to decide whether to mount a challenge to the Union's dues reduction calculations.

(b) Failing to make available to the objecting Charging Party a procedure, consistent with the duty of fair representation, for challenging the amounts charged, absent waiver of the objector's union-security obligations.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Jack Bodenstein and other employees who have filed a *Beck* objection with information setting forth the percentage of the reduction in dues and fees charged to *Beck* objectors, the basis for that calculation, and the right to challenge these figures.

(b) Within 14 days after service by the Region, post at its business office and meeting hall copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Oklahoma Fixture Company, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] This provision of our Order replaces pars. 1(a) and 2(a) of the judge's recommended Order. In our view, this more accurately construes the specific complaint allegation in this case. In other words, we do not believe that the specific complaint allegation here was sufficiently clear to put the Respondent on notice that the General Counsel was contending that it failed to give its *Beck* notice obligations in violation of the Act. However, nothing in this decision is intended to suggest that a union, which has initial *Beck* notice obligations, can escape those notice obligations, as described in *California Saw & Knife*, supra at 231, simply by virtue of its willingness to relieve an employee, who actually objects, of the obligation to pay any dues.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to provide employees who have filed a *Beck* objection with information to allow them to decide whether to mount a challenge to the Union's dues reduction calculations.

WE WILL NOT fail to make available to *Beck* objectors a procedure, consistent with the duty of fair representation, for challenging the amounts charged, absent waiver of the objector's union-security obligations.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL provide Jack Bodenstein and other nonmember employees who have filed a *Beck* objection with information setting forth the percentage of the reduction in dues and fees charged to *Beck* objectors, the basis for that calculation, and the right to challenge these figures.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 943, AFL–CIO

Stephen E. Wamser, Esq., for the General Counsel.
Tom Birmingham, Esq. (Birmingham, Morley Weatherfore, & Priore), of Tulsa, Oklahoma, and *Timothy Sears, Esq.*, of Washington, D.C., for the Respondent.
John C. Scully, Esq., of Springfield, Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Tulsa, Oklahoma, on March 7, 1994. Jack Bodenstein filed[1] the charge in this case on October 21, 1993.[2] On November 30, the Regional Director for Region 17 issued the complaint in this case, alleging that the Respondent, United Brotherhood of Carpenters and Joiners of America, Local Union No. 943, AFL–CIO (the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act), by failing and refusing to establish a procedure whereby dues paying nonmember employees employed in the bargaining unit of Oklahoma Fixture Company's employees may object pursuant to *Communications Workers v. Beck*, 487 U.S. 735 (1988), to the Union's expenditure of funds, collected pursuant to the union-security clause in the current collective-bargaining agreement covering those employees, on activities unrelated to collective bargaining, contract administration, or grievance adjustment. The complaint also alleged that the Union violated the same section of the Act by failing and refusing to provide Bodenstein, a bargaining unit nonmember employee, with a disclosure statement setting forth which of the Union's expenditures were chargeable expenses and which were nonchargeable expenses under *Communications Workers v. Beck*, supra.

In its timely answer to the complaint, the Union denied that it committed the alleged unfair practice.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Bodenstein, and the Union, I make the following

FINDINGS OF FACT[3]

I. JURISDICTION

The Company, a corporation with an office and facilities in Tulsa, Oklahoma, has, at all times material to this case, engaged in the manufacture and nonretail sale of store fixtures and related products. During the 12-month period ending October 31, the Company, in conducting its business, sold and shipped from its Tulsa, Oklahoma facilities goods valued in excess of $50,000 directly to points outside the State of Oklahoma. I find from the foregoing admitted data that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), (7). The Union admitted and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The Company manufactures store fixtures, display cabinets, and related products at two separate locations in Tulsa, Oklahoma. The Union and the Company are parties to a collective-bargaining agreement, effective from December 1, 1992, until November 30, 1994, covering a unit of the Company's 300 carpentry and wood working employees. The agreement provides for wages, hours, and other terms and conditions of employment and includes the following union-security provisions:

> 2.1 It shall be a condition of employment that all employees of the company covered by this agreement who are members of the union in good standing on the effective date of this agreement shall remain members in good standing, and those who are not members on the effective date of this agreement shall, on the ninety-first (91st) day following the effective date of this agreement, become and remain members in good standing in the union.
>
> 2.2 For the purpose of this Agreement, an employee shall lose his good standing in the Union only for failure to tender periodic dues and initiation fees uniformly required of all members. The Business Manager of the Union shall notify the Company by certified mail of any employees the union deems to have lost "good standing" within the meaning of this Article.

By letter dated July 6, Bodenstein, a member of the collective-bargaining unit, resigned his union membership, declared himself "protected by financial-core status" as defined in *Communications Workers v. Beck*, supra, and requested that he be charged "the new appropriate amount" of dues "in compliance with the requirements of *Beck*." Since July 6, Bodenstein has not paid or tendered any dues to the Union, and the Union has not charged him with dues.

On or about July 28, the Company, by letter to the bargaining unit employees, advised them that financial core membership was available to them, that full union membership was not a condition of employment under the current union-security clause, and that the Union had a duty to in-

[1] The Charging Party's first name appears as he requested at the hearing.

[2] All dates are in 1993 unless otherwise specified.

[3] There are no issues of credibility raised in this case.

form them of these matters. The Company wrote that it had filed an unfair labor practice charge because it had reason to believe the Union had not informed its members, as the law required.

The Union answered Bodenstein by letter dated August 5. In its response, the Union indicated its understanding that he was resigning his full membership. The Union's letter advised Bodenstein that his insistence on financial core status would result in his loss of membership benefits, that as a financial core member, under the current union-security clause in the collective-bargaining agreement with the Company, he would be required "to pay the financial obligations of membership germane to the costs of collective bargaining, contract administration, and grievance adjustment" and suggested that he reconsider his decision to be a financial core member. The Union's letter closed with the assertion that it was "currently undergoing [its] annual audit, and will, when this is accomplished, identify all expenses germane to collective bargaining issues."

In a followup letter dated February 23, 1994, the Union advised Bodenstein that despite his resignation, compliance with the current union-security clause in the collective-bargaining agreement with the Company, required that he pay sums equal to the full monthly dues required of all members of the Union, to a "mutually-agreed charitable fund." The Union listed three charitable funds acceptable to it. Bodenstein did not adopt the Union's proposal. Instead, he quit his job at the Company.

B. *Analysis and Conclusions*

Under Section 7 of the Act, Bodenstein had a right to refrain from full membership in the Union. However, Section 8(a)(3) of the Act limited that right by authorizing employers and unions to enter into agreements which "require as a condition of employment membership [in the union] on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, which ever is the later." In his letter of resignation, Bodenstein asked the Union to tell him the extent of that limitation on his right to refrain from providing it with financial support, and to charge him as little as the applicable law required him to pay. The question raised by the pleadings is whether the Union's response impaired Bodenstein's Section 7 right to refuse to provide financial assistance for union activities which had nothing to do with his wages, hours, and conditions of employment.

In dealing with the contention that the Union's treatment of Bodenstein ran afoul of Section 8(b)(1)(A) of the Act, I look first to the teachings of *Communications Workers of America v. Beck*, supra. There the Court expanded its prior holding in *NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963), that under Section 8(a)(3) of the Act, "the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues." Accord: *Electrical Workers IUE Local 444 (Paramax Systems)*, 311 NLRB 1031, 1035 (1993). In *Beck*, the Court held that under Section 8(a)(3) of the Act, "financial core" union members—those who pay dues as a requirement of employment, but do not choose to join the union—cannot be required to pay more than "those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'" 487 U.S. at 762–763, quoting *Ellis v. Railway Clerks*, 466 U.S. 435, 448 (1984). Specifically, the Court in *Beck* held that financial core membership does not include "the obligation to support union activities beyond those germane to collective bargaining, contract administration and grievance adjustment." 487 U.S. at 745. Further, this obligation is limited to the financial core member's bargaining unit. 487 U.S. at 762–763, citing *Ellis v. Railway Clerks*, supra at 448.

Under Board policy, the Union, as the exclusive bargaining representative of the Company's employees, had a fiduciary duty of fair dealing requiring it to advise Bodenstein and all other members of the collective-bargaining unit, "not just those who are faced with imminent discharge, as to the precise extent of their obligations and rights" with respect to their financial burden under the current union-security provisions. *Electrical Workers IUE Local 444 (Paramax Systems)*, supra at 1038–1040. The Board has recognized that: "The rationale for requiring the union to provide this information is that it, as the exclusive representative, must ensure that unit employees do not fail to meet their obligations through 'ignorance or inadvertence,' but do so only as a result of conscious choice." (Citation omitted.) Id. at 1039.

The Union's obligation here, as exclusive representative, includes the duty to provide Bodenstein and all other members of the collective-bargaining unit, who are objecting financial core members and thus entitled to object to the Union's calculation of financial core dues, with "sufficient information to gauge the propriety of the Union's fee." *Chicago Teachers Local 1 v. Hudson*, 475 U.S. 292, 306 (1986). Accord: *Tierney v. City of Toledo*, 824 F.2d 1497, 1503 (6th Cir. 1987). The Court noted in *Hudson* that "absolute precision 'cannot' be expected or required," but, the information must inform the employee of the major categories of expenses, whether the union considers each category of expense to be representational or nonrepresentational, the total sum of expenditures, and the percentages thereof that were representational and nonrepresentational. Id. at 307 fn. 18. Accord: *Tierney v. City of Toledo*, supra at 1503. "The test of adequacy of the initial explanation to be provided by the union is . . . only whether the information is sufficient to enable the employee to decide whether to object." *Dashiell v. Montgomery County, Md.*, 925 F.2d 750, 756 (4th Cir. 1991). If the employee objects to the fee, the union, then has the burden of showing in detail how it arrived at the amount in question. Id.

Applying the teachings of *Beck*, *Paramax*, and the other cases cited above, I find that the Union did not carry out its fiduciary duty to apprise Bodenstein of his obligation and rights as a financial core member, who did not want to pay more than "those fees and dues necessary to '[support] the duties of an exclusive representative . . . in dealing with [the Company] on labor-management issues.'" The Union did not give him a breakdown of the portions of membership dues which it spent on representational and nonrepresentational activities. Nor did the Union advise him of the fee attributable to its collective bargaining, contract administration, and grievance adjustment in the bargaining unit of which he was a member. The Union also neglected to tell him that he could object to the fee it intended to charge him. In sum, I find that the Union breached its fiduciary duty of fair dealing.

The Union's letters did not provided the required information. The letter of July 5 advised Bodenstein that his resignation from full union membership would deprive him of benefits and participation in matters of concern to bargaining unit members, and that as a "'financial-core' member," he would be liable to pay "the full financial charges germane to the union's functions as collective bargaining representative." The Union did not divulge what that fee would be. Nor did the Union use this letter as an opportunity to inform Bodenstein of his right to object to the Union's fee. The letter promised that on completion of a current audit, the Union would "identify all expenses germane to collective bargaining issues." There was no showing that the Union ever offered to show a breakdown of those expenses to Bodenstein at any time. Nor did the Company's letter of July 28 provide such a breakdown or specify the fee. In any event, under the Act, it was the Union's obligation to provide this information.

The Union's letter of February 23, 1994, withdrew its acceptance of a financial core fee based on "expenses germane to collective bargaining issues." It now insisted that Bodenstein and other financial core members must satisfy their financial obligations under the union-security clause by paying, to a mutually agreed charitable fund, amounts equal to the dues which full union members pay. In any event, the second letter did not advise Bodenstein of his rights and obligations under *Beck*.

At the hearing, the Union offered its form LM-2, a financial report to the U.S. Department of Labor for the year ending June 30, 1993, and its financial statements for the years ending June 30, 1992, and 1993 to show that it had published for Bodenstein, and all its members, who were interested, a breakdown of its expenditures. The Union also showed that, it presented its annual financial statements and its LM-2 to the membership at meetings, and had the audits and the LM-2 available at its office for their inspection. However, these financial statements did not satisfy the Union's fiduciary duty to objecting financial core members. For, neither of these reports showed the amounts expended in performing representational duties for the bargaining unit of the Company's employees. Nor did the Union ever send either of them to Bodenstein in response to his assertion of objecting core membership rights.

I find that by failing to advise Bodenstein and all other bargaining unit employees of their rights and obligations if they chose to become objecting financial core members of the Union and by failing to disclose to Bodenstein, who became an objecting financial core member, the amount or percentage of dues spent on nonrepresentational activities, and the amount or percentage of dues spent on representational activities, the Union has breached its duty of fair dealing in violation of Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. The Union, United Brotherhood of Carpenters and Joiners of America, Local Union No. 943, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. The Company, Oklahoma Fixture Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. By failing and refusing to establish and promulgate a procedure whereby dues paying nonmember employees employed in the following unit may become objecting financial core members of the Union, and thus challenge the Union's expenditure of dues collected pursuant to the current union-security clause in the collective-bargaining agreement covering that unit, on activities unrelated to collective bargaining, contract administration, or grievance adjustment for that unit, the Union violated Section 8(b)(1)(A) of the Act:

> All employees performing carpentry and wood working functions at the Company's facilities located at 924 South Hudson, and at 2900 East Apache, Tulsa, Oklahoma, which employees customarily and regularly work on the fixtures manufactured by the Company at its facilities located at 924 South Hudson, and at 2900 East Apache, Tulsa, Oklahoma, but excluding all office clerical employes, professional employees, supervisors, guards and any employees who apply any finish, including paint, to any and all fixtures manufactured by the Company.

4. By failing and refusing to provide Jack Bodenstein, an objecting financial core member, with a disclosure statement setting forth which of its expenditures were for collective bargaining, contract administration, or grievance adjustment for the bargaining unit described above, and thus chargeable, and which were nonchargeable expenses, unrelated to the collective-bargaining process, the Union violated Section 8(b)(1)(A) of the Act.

5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Union has violated Section 8(b)(1)(A) of the Act, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Union is required to notify each bargaining unit employee, in writing, of the employee's right to become an objecting financial core member of the Union, and challenge the Union's expenditure of dues collected pursuant to the current union-security clause in the collective-bargaining agreement covering the Company's employees, on activities unrelated to collective bargaining, contract administration, or grievance adjustment. Further, the Union is required to provide each bargaining unit employee, who is a financial core member, a disclosure statement showing which of the Union's expenses are chargeable for activities related to collective bargaining, contract administration, or grievance adjustment regarding the bargaining unit described above, and which of the Union's expenses were nonchargeable for those activities.

[Recommended Order omitted from publication.]